

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ROGER JAMES GIFFORD,

Plaintiff,

vs.

UNITED STATES OF AMERICA et al.,

Defendants.

3:13-cv-00515-RCJ-VPC

ORDER

Plaintiff Roger James Gifford sued three Defendants in this Court for the return of his property, attaching the Complaint to a motion to proceed *in forma pauperis*. The magistrate judge granted the motion and screened the Complaint pursuant to 28 U.S.C. §1915, but rather than recommend dismissal, the magistrate judge dismissed directly, giving Plaintiff thirty (30) days to amend. Plaintiff has amended but has also filed a motion asking this Court to review the dismissal order.

The Court interprets the motion as one for relief from judgment pursuant to Rule 60(b)(4). That is, the magistrate judge's dismissal order is void for a lack of statutory jurisdiction to enter it. Decisions dispositive of a case, such as decisions to dismiss a claim, may not be referred to a magistrate judge for final determination, 28 U.S.C. § 636(b)(1)(A), unless the parties consent, *id.* § 636(c)(1). In the absence of consent, a magistrate judge may only issue a report and recommendation for final determination by a district judge. *Id.* § 636(b)(1)(B)–(C). The Court therefore grants the motion under Rule 60(b)(4). *See David v. Dist. of Colombia*, 252 F.R.D. 56, 59 (D.D.C. 2008).

1 The Court will not examine the merits of the screening order but will vacate the order in
2 part (as to dismissal). Plaintiff shall have twenty-eight (28) days to further amend in order to add
3 any claims dismissed from the original Complaint.

4 **CONCLUSION**

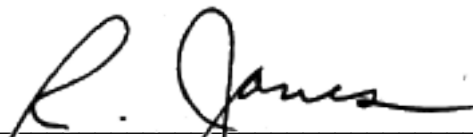
5 IT IS HEREBY ORDERED that the Motion for Relief from Judgment (ECF No. 6) is
6 GRANTED IN PART.

7 IT IS FURTHER ORDERED that the Order (ECF No. 4) is VACATED IN PART, as to
8 the dismissal of the Complaint.

9 IT IS FURTHER ORDERED that Plaintiff shall have twenty-eight (28) days to amend to
10 add any claims dismissed from the original Complaint.

11 IT IS SO ORDERED.

12 Dated this 27th day of May, 2014.

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15 ROBERT C. JONES
16 United States District Judge
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